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FISCAL IMPACT STATEMENT

LS 6589

BILL NUMBER: HB 1437

NOTE PREPARED: Feb 5, 2004

BILL AMENDED: Feb 4, 2004

SUBJECT: Treatment of Nonviolent Drug Offenders.

FIRST AUTHOR: Rep. Crawford
As Introduced:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. It requires creation of a controlled substance rehabilitation program, which requires an individual who pleads guilty to or is convicted of a nonviolent crime that involves controlled substances to complete a controlled substance rehabilitative program instead of incarceration.
- B. It provides that a controlled substance rehabilitative program may be operated by a community corrections advisory board, a certified drug court, or a court alcohol and drug services program.
- C. It requires the Department of Correction to determine the average daily cost of incarceration and the anticipated future costs of incarceration.
- D. It requires each county sheriff to provide the Department of Correction with the average daily cost of incarceration in a county jail.
- E. It repeals provisions concerning treatment, continuance of prosecution, and probation after felony charges and convictions of certain offenders.

Effective Date: July 1, 2004.

Explanation of State Expenditures: (Revised) *Provisions A and B:* Under this bill, offenders who are convicted of nonviolent crimes and are found by the court to be addicted to controlled substances would be sentenced to community corrections programs rather than state correctional facilities. The offender could remain in the program for a maximum of two years.

These community-based programs would be operated by a community corrections advisory board, a certified drug court, or a court alcohol and drug services program and financed by the Controlled Substances Rehabilitation Program Fund established by the bill. The money in the Fund would come from donations, grants, and other contributions, as well as amounts appropriated by the General Assembly.

If an offender is ordered to participate in an alternative program instead of being incarcerated, the state would save the cost of incarceration. The savings from diverting felony offenders to community programs would be offset by the costs of treatment, supervision in the community, and by the potential failure of treatment for some offenders resulting in a term of incarceration in a Department of Correction (DOC) facility.

The following information is provided as it relates to the fiscal impact of this bill:

- The potential number of offenders who are convicted of drug possession, dealing, and other nonviolent nondrug offenses that might be related to drug addiction.
- The duration of the program compared to the sentences of the offenders.
- The potential number of beds saved.
- The new costs associated with establishing these programs at the county level which will offset the avoided costs of incarcerating these offenders.

Potential Number of Offenders:

Based on the offender population in DOC facilities on December 15, 2002, who had intake dates during FY 2003, almost half of the 5,580 offenders were in prison for a drug crime or a crime that did not involve the use of force or the threat of force.

DOC reports that 67 counties currently have community corrections programs that are funded through the Department of Correction. Of the counties with no state-funded community corrections program, several operate extensive probation and community supervision programs. Of the estimated 5,580 offenders, 85% would remain in counties with state-funded community corrections programs while the balance would be in counties where no community corrections programs are currently established.

Offenders in DOC Facilities on December 15, 2003, with Intake Dates During FY 2003 Committed for Nonforcible Felonies By Felony Class						
	Felony Class				Total	
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>		
Counties with Community Corrections Programs	170	1,075	1,549	1,972	4,766	85%
Counties without Community Corrections Programs	<u>16</u>	<u>141</u>	<u>248</u>	<u>409</u>	814	15%
Grand Total	<u>186</u>	<u>1,216</u>	<u>1,797</u>	<u>2,381</u>	<u>5,580</u>	

Prior History of Offenders:

Based on the intake status that was available for this population group, almost 52% are in DOC with no prior commitment to the Department of Correction (although they may have either been on probation or served time in a county jail.) LSA assumes that a portion of these offenders might qualify for this diversion if:

- Each offender is addicted to a controlled substance.
- None of the offenders have a prior criminal history that would disqualify them.

Prior History of Offenders	FA	FB	FC	FD	Grand Total
First time commitment to DOC	117	736	803	1214	2,870
New commitment with adult prior	37	249	594	791	1,671
Rule violators while on probation	22	172	328	311	833
New commitment with juvenile prior	<u>10</u>	<u>59</u>	<u>72</u>	<u>65</u>	<u>206</u>
Grand Total	<u>186</u>	<u>1,216</u>	<u>1,797</u>	<u>2,381</u>	<u>5,580</u>
Percentage of First Time Commitments	63%	61%	45%	51%	51%

Average Length of Sentences:

Both the sentence length that the court imposes and the length of the program will affect the costs of this new program. The length of stay for offenders ordered to participate in a community substance abuse treatment program is two years. Once the treatment program ends, the offender would presumably remain on probation for the balance of the offender's sentence. Consequently, offenders with longer sentences, such as Class A felons, will increase the costs of the program since they are in the program for longer periods of time.

The following shows the shortest and longest potential length of stays based on the 5,580 offenders who were in DOC facilities on December 15, 2003.

Average Minimum and Maximum Sentence Lengths of Offenders			
<u>Felony Class</u>	<u>Number of Felons</u>	<u>Average Length of Sentence (In Years) Based on</u>	
		<u>Earliest Possible Release Date</u>	<u>Maximum Release Date</u>
A	186	10.1	20.2
B	1,216	3.5	7.3
C	1,797	1.8	3.6
D	2,381	1.0	2.0
Totals	5,580		

Illustration of Potential Number of Beds Saved:

When making these projections, the following assumptions are made:

- All counties will have a program that is fully implemented on July 1, 2004.
- All offenders with no prior commitments for a felony to DOC are eligible.
- Half of these offenders have an addiction to a controlled substance.
- No one placed in the program violates rules and is returned to DOC facilities.

This illustration provides the number of beds that could be saved by projecting half of the offenders with no prior commitment to DOC over the minimum sentence of each felony class based on the earliest possible release date shown in the previous table. This first cohort of offenders will be placed in a community-based facility on probation in FY 2005 and for the balance of the offender's sentence. As an example, Class A felons will begin the program in 2005, be placed on probation in 2007, and be released from probation in 2015. Class

B felons will be released from probation in 2009.

Illustration of Offenders Diverted from DOC Facilities					
Felony Class	Offenders With No Prior Commitment to DOC	Percent With Substance Abuse Addiction	Potential Number of Offenders Who Would Be Diverted	Year when Commitment Begins	Year When Offender Is Released
A	117	50%	59	2005	2015
B	736	50%	368	2005	2009
C	803	50%	402	2005	2007
D	1,214	50%	607	2005	2006
Totals	2,870		1,436		

Based on these offenders, the following table illustrates the potential beds that could be saved over a ten-year horizon if half of these offenders with no prior commitments to DOC are successfully diverted into a community-based system and do not return to the Department of Correction.

In FY 2004, the average cost for housing an offender in a contract bed in a private facility is \$45 per day. Applying this cost, if these offenders never served time in a state correctional facility, the state could save the following amounts over the ten-year period between FY 2005 and FY 2015.

Illustration of Potential Savings of Prison Beds Through Diversion of Offenders									
FY	A	B	C	D	Total Offenders		Per Diem Cost		Savings in Millions
2005	59	368	402	607	1,436	x	\$16,425	=	\$23.6 M.
2006	118	736	804	607	2,265	x	\$16,425	=	\$37.2 M.
2007	177	1,104	1,206	607	3,094	x	\$16,425	=	\$50.8 M.
2008	236	1,472	1,206	607	3,521	x	\$16,425	=	\$57.8 M.
2009	295	1,840	1,206	607	3,948	x	\$16,425	=	\$64.8 M.
2010	354	1,840	1,206	607	4,007	x	\$16,425	=	\$65.8 M.
2011	413	1,840	1,206	607	4,066	x	\$16,425	=	\$66.8 M.
2012	472	1,840	1,206	607	4,125	x	\$16,425	=	\$67.8 M.
2013	531	1,840	1,206	607	4,184	x	\$16,425	=	\$68.7 M.
2014	590	1,840	1,206	607	4,243	x	\$16,425	=	\$69.7 M.
2015	649	1,840	1,206	607	4,302	x	\$16,425	=	\$70.7 M.

Offsetting Costs

The following series of costs, that would have to be absorbed by the newly created fund, could offset to some extent the savings associated with the cost of prison beds and the associated costs of keeping offenders in DOC facilities:

- Inpatient and outpatient substance abuse treatment.
- New residential facilities constructed.
- More probation officers to supervise offenders who complete the program.
- Offenders failing to complete program or violating rules and returning to DOC.
- Court-ordered assessments of each offender.
- Added responsibilities for the Family and Social Services Administration to monitor and certify the programs.

(1) Inpatient and Outpatient Care - The treatment for an offender will depend on each offender's degree of

addiction. The following table illustrates the potential treatment costs assuming that in the first year each offender will participate in each substance abuse program type for the average length of stay.

<u>Treatment Stage</u>	<u>Length of Stay</u>	<u>Cost Per Day</u>	<u>Cost Per Treatment Stage</u>	<u>If 1,436 Offenders Are Treated Each Year (in Millions)</u>
Detoxification	6	\$194	\$1,164	\$1.7 M.
Residential	92	\$66	\$6,072	\$8.7 M.
Intensive Outpatient	52	\$33	\$1,716	\$2.5 M.
Standard Outpatient	215	\$15	\$3,225	\$4.6 M.
Annual	365		\$12,177	\$17.5 M.
Source: <i>The Cost and Components of Substance Abuse Treatment, July, 2001</i> , Center for Substance Abuse Treatment.				

Offenders successfully completing the first year, will likely need continued counseling, vocational training, and financial and other assistance in providing child care, housing, and transportation. Offenders who relapse may need additional detoxification, counseling, or another treatment component..

(2) Residential Facilities – Depending on the current facilities that are available, more residential facilities may be needed to accommodate the added need. The specific costs associated with these facilities will depend on the arrangements made at the local level. Some of these facilities could be built by private providers, but at least some of the costs will need to be absorbed by the Controlled Substance Rehabilitation Fund.

(3) More Probation Officers – Offenders committed to this program presumably participate for the first two years in this program and serve the remainder of their sentence on probation. As an example, if an offender is sentenced for a Class A felony to a minimum term of ten years, the offender will remain in the program for the first two years and will be assigned to probation for the remaining eight years. The number of offenders will begin to accumulate as new offenders enter the program, and the courts may need to increase the number of probation officers to supervise these offenders. The need for more probation officers will depend on the backgrounds of the offenders and the degree of supervision that these offenders will need.

(4) Failure to Complete Program and Rules Violations – Offenders will often fail to complete treatment or will commit new crimes. Depending on whether a rule is broken or a new crime is committed, offenders will either have to return to DOC or may be ordered to participate in a more intensive and more expensive treatment component. According to a report on substance abuse programs in state correctional facilities, about 55% of the offenders enrolled successfully complete the program. (Others were removed from the program, transferred, or were released from a sentence before completing the program.)

(5) Court-Ordered Assessments of Offenders - The court may request that the controlled substance rehabilitation program established in the county evaluate and examine an individual to determine whether the individual is a drug abuser or alcoholic and would be rehabilitated through treatment. No data exists to indicate how many offenders may be evaluated and examined for intake into the program. Assuming that every new offender is evaluated, based on the average cost of evaluations and medical examinations, the total cost is estimated to be \$370,000 each year.

Costs of Various Evaluations		
<u>Service Type</u>	<u>Average Cost of Service¹</u>	<u>If 1,436 Offenders Are Evaluated Each Year</u>
Initial Assessment	\$61.75	\$88,673
Medical Examination	\$80.25	\$115,239
Psychosocial Evaluation	\$115.25	\$165,499
Total	\$258.25	\$370,847
¹ The average cost for each level of care were averaged for this review. Source: <i>The Cost and Components of Substance Abuse Treatment, July 2001</i> , National Evaluation Data Services.		

(6) Certification of Programs – Under the bill, a controlled substance rehabilitation program must be certified by the Division of Mental Health and Addiction of the Family and Social Services Administration. FSSA is likely to incur some added costs to certify programs that do not currently exist.

(7) Department of Correction Staff -- DOC staff would likely need to monitor and evaluate the program with other participating agencies. Depending on the involvement of the Department, DOC may need to add more staff.

Provision C would require DOC to develop a methodology for determining the average daily cost of incarcerating offenders in state facilities and in each county jail. The costs would be provided in a semiannual report to each court with jurisdiction over felony and misdemeanor cases.

Under current law, the State Board of Accounts is responsible for estimating the average daily cost of confining people in certain state correctional facilities (to fulfill IC 11-12-2-9). According to DOC, DOC estimates the average daily cost of incarceration and provides this information to the State Board of Accounts for review. New activities for DOC under the bill may include collecting semiannual average daily cost data from the 92 counties and producing reports for courts with jurisdiction over felony and misdemeanor cases. This may require minimal increases in workload.

The bill also requires that the DOC conduct or contract for an actuarially based study of the projected costs of incarceration including present and anticipated future costs, the effect of credit time, the effect of inmate mortality rates, projected increase in the cost of incarceration, and any other relevant factors. The results of the study would be distributed to the Legislative Council by July 1 of each year. The DOC currently operates a prison population estimating program. Assuming that the information produced by this system is sufficient to make actuarially based studies of project costs of incarceration, fulfilling the reporting requirements under this section may require additional work for the fiscal section of DOC.

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) *Provisions A and B:* The prison population data from December 15, 2003, includes the county from which these offenders were sentenced. Based on this data, the number of offenders who could potentially be in a program in each county are estimated. The following table shows that 55 of the counties will retain 10 or fewer offenders that would have been committed to DOC from their counties.

How Felony Offenders Might Be Distributed			
Number of Felons Who Would Remain in County	Counties with Community Corrections Programs	Counties without Community Corrections Programs	Total Counties
5 or less	22	6	28
6 to 10	17	10	27
11 to 20	12	8	20
21 to 49	11	1	12
50 to 99	4	0	4
100 or more	<u>1</u>	<u>0</u>	<u>1</u>
Total	<u>67</u>	<u>25</u>	<u>92</u>

Depending on the number of offenders, counties may wish to consolidate operations to spread costs over a larger number of offenders.

Background on Drug Courts – Currently, ten counties operate drug courts in Indiana, and five additional courts are in the planning stage. The following tables show where these drug courts are located.

Adult Courts With Operating Programs as of January 2004		
<u>County</u>	<u>Trial Court</u>	<u>City Court</u>
Allen	Allen Superior Court	
Clark	Clark Superior Court	
Dearborn/Ohio	Dearborn/Ohio Circuit Court	
Lake		Gary
Johnson		Greenwood
Madison	Madison County Court	
Marion	Marion Superior Court	
Monroe	Monroe Circuit Court	
St. Joseph	St. Joseph Superior Court	
Tippecanoe	Tippecanoe Superior Court	
Vanderburgh	Vanderburgh Superior Court	
Vigo	Vigo Superior Court	
Total	10	2

Adult Drug Courts in Planning Stage as of January, 2004	
<u>County</u>	<u>Trial Court</u>
Delaware	Delaware Circuit Court #2
Grant	Grant Superior Court #3
Howard	Howard Superior Court
Lawrence	Lawrence Superior Court #2
Warrick	Warrick Superior Court

Background on Court Alcohol and Drug Services Programs: The Indiana Judicial Center reports that 52 counties currently operate alcohol and drug programs that are certified by the Center. In addition, 13 counties are in the planning stages for developing alcohol and drug programs that would be certified by the Indiana Judicial Center.

Explanation of Local Revenues: *Provisions A and B:* The Department of Correction would be responsible for disbursing funds from the Controlled Substance Rehabilitation Program Fund to counties that comply with the provisions of the bill.

Provision C requires courts to include the total costs of incarceration (the number of days for which a prisoner is sentenced times the average daily cost of incarceration) in the sentencing order. To the extent that this provision could require additional preparation time or form redesign, administrative costs could minimally increase.

The bill also requires county sheriffs to provide DOC with the average daily cost of incarcerating a prisoner in their county jails. Statute requires a sheriff to base per diem fees on average daily cost, but it does not require sheriffs to collect cost information. For the most part, sheriffs do not collect or report average daily cost information. In order to report this information semiannually on January 31 and June 30, sheriffs may incur additional costs for accounting services. The amount of the additional costs will depend on information currently available in the individual county.

Background: According to the Indiana Sheriffs' Association, information on average daily cost was compiled in a voluntary survey conducted several years ago. The purpose of the survey was to show the difference between average daily cost and the per diem reimbursement counties receive from the state for housing a state prisoner. The survey showed great variation among counties, with an average cost of about \$44 per day.

State Agencies Affected: Department of Correction, Family and Social Services Administration.

Local Agencies Affected: Trial Courts; Counties; Prosecuting Attorneys; Community Corrections Agencies.

Information Sources: *Indiana Judicial Report 2002; Indiana Probation Report 2002; Department of Correction Substance Abuse Program Accomplishments 2002; United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, ADSS Cost Study: Costs of Substance Abuse Treatment in the Specialty Sector; National Evaluation Data Services, The Cost and Components of Substance Abuse Treatment, July 2001, <http://www.in.gov/judiciary/center/cadp/docs/directory0104.doc>*

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